

**JAN 19 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN RAMON ORTEGA-BALDERAS,

Defendant - Appellant.

No. 04-50508

D.C. No. CR-04-00896-LAB

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Larry A. Burns, District Judge, Presiding

Submitted January 9, 2006<sup>\*\*</sup>

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Juan Ramon Ortega-Balderas appeals the 78-month sentence imposed following his guilty-plea conviction for importation of cocaine in violation of 21 U.S.C. §§ 952 and 960, and 18 U.S.C. § 2.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Under the circumstances of this case, we conclude that the plea agreement waiver is not enforceable. *See United States v. Buchanan*, 59 F.3d 914, 918 (9th Cir. 1995). We cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were mandatory. Accordingly, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

**REMANDED.**